

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 228 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

BHARAT VIJAY CONSTRUCTION CO

Appearance:

MR Mihir Joshi for MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 15/04/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal has referred the following questions for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

Question Proposed in R.A. No. 388 of 1992

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee is entitled to investment allowance of Rs. 256975/- under section 32A of the I.T.Act ?

Question proposed in R.A. No. 289 of 1992

Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee is entitled to investment allowance of Rs. 8130/- under section 32A of the I.T. Act ?

Question proposed in R.A. No.390 of 1992

Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee is entitled to deduction under section 80HH of Rs. 22529/- of the I.T.Act considering the assessee's business of construction of dams and roads as Manufacturing activities ?"

2. The assessee is carrying on business of constructing dams, roads etc. It claimed investment allowance on the machinery which was put to use during the relevant accounting year for the said purpose. A.I.C denied the grant of investment allowance. The C.I.T. (Appeals) held that the construction activities carried out by the assessee amounted to manufacturing activities and that the assessee was entitled to grant of investment allowance for both the years in question. The Tribunal found that the finding of the C.I.T. (Appeals) did not require any interference. The Tribunal upheld the view of the C.I.T. (Appeals) who had directed the I.T.O. to allow deduction under section 80HH of the Act observing that construction activities carried on by assessee were rightly held to be manufacturing activities by the C.I.T.(Appeals).

3. Similar question had come up for

consideration before the Hon'ble Supreme Court in C.I.T. vs. N.C.Buddharaja reported in 204 ITR, 413 in which it was held that the assessee who had claimed such allowance on the actual cost of the machinery and plant, installed for the purpose of its business pertaining to construction of dams and canals was not entitled to the allowance under section 32A of the Act because that provision did not comprehend within its ambit construction of a dam, bridge, road, canal or other similar constructions. In view of this settled legal position, we hold that the Tribunal committed an error in coming to the conclusion that the assessee was entitled to investment allowance under section 32A and deduction under section 80HH of the Act. All the questions referred to us are therefore, answered in the negative in favour of the Revenue and against the assessee. The Reference stands disposed of accordingly with no order as to costs.

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